IN THE IOWA DISTRICT COURT FOR WOOBURY COUNTY

KING OF TRAILS, LLC Petitioner, vs. SIOUX CITY BOARD OF REVIEW ET AL Respondents.	NO. CVCV140787 RULING ON MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on November 30, 2009 in response to a Petition of Appeal filed by Appellant King of Trails, L.L.C. This Petition was filed by Petitioner on September 3, 2009. On November 30, the matter was deemed submitted to the Court following briefs by the parties. Petitioner filed its brief on October 28, 2009. The State of Iowa Property Assessment Appeal Board ("PAAB") filed its brief on November 19, 2009. After reviewing the arguments of the parties; the factual record; and the applicable law, the Court now issues the following ruling:

FINDINGS OF FACT AND PROCEDURAL HISTORY

This matter concerns a piece of real estate located at 3517_37 Singing Hills Boulevard. The property is a multi-tenant commercial strip center. It is described for Tax Purposes as:

> North of Singing Hills Boulevard and East of Southgate 3rd Filing in the East Half of the Southeast Quarter of the Northwest Quarter of fractional Section 18, Township 88 North, Range 48 West of the Fifth Principal Meridian, City of Sioux City, Woodbury County, Iowa.

Petitioner states the building on the property was constructed in 2000. Following its construction, Wal-Mart and other commercial entities constructed retail buildings close to the Petitioner's property. Petitioner argues that this sudden rise in the amount of commercial and retail buildings resulted in the property being overbuilt, eventually leading to a decline in construction and ultimately resulted in no new construction from 2007-2008. Petitioner's building has vacancies which it claims it is unable to fill, and has had to lower its rental rates in order to attract new tenants.

The dispute concerns an assessment of taxes on the property. In 2008, the property was assessed at $1,841,600. Petitioner believes the property assessment was too high. In response, Petitioner protested its opinion to the Board of Review of Sioux City. The protest was denied and the assessment was upheld. Petitioner next filed an appeal with the Property Assessment Appeal Board in Des Moines, Iowa. In its Petition to the Board of Review, Petitioner filled out a form arguing various reasons for his opinion that the property was overassessed. The Petitioner's owner, acting pro-se, wrote "I have not been able to rent a space in two years at any price. I don't even get calls" under a section indicating "that there has been a change downward in the value

since the last assessment" and referencing Iowa Code section 441.35. A telephonic hearing occurred on July 7, 2009 before the PAAB, and the decision was affirmed on August 17, 2009. The PAAB explained its reasoning on the theory that there was not sufficient evidence to prove a downward change in value in the area from 2007-2008. Petitioner now seeks relief from the District Courts, citing Iowa Code Section 441.38.

Petitioner argues for relief on two separate issues. First it argues it was unfairly restrained by the PAAB's decision to limit Petitioner's arguments to the ground of "downward trend". Secondly, it argues it presented sufficient evidence to prove a downward trend in the area before the PAAB.

SCOPE OF REVIEW

A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by a final agency motion is entitled to judicial review. Iowa Code § 17A.19(1) (1999). In exercising the power of judicial review conferred by Iowa Code § 17A.19(8)-(11), the district court acts in an appellate capacity to review agency action and correct errors of law. *Hanson v. Reichelt*, 452 N.W.2d 164, 166 (Iowa 1990). The district court's review is circumscribed. Review of agency action is at law, not *de novo*, and is limited to the record made before the agency. *Taylor v. Iowa Dept. of Job Serv.*, 362 N.W.2d 534, 537 (Iowa 1985). Additional evidence or issues not considered by the agency cannot be considered by the court. Iowa Code § 17A.19(7) (1999); *Meads v. Iowa Dept. of Social Serv.*, 366 N.W.2d 555, 559 (Iowa 1985). The court may not substitute its judgment for that of the agency. *Mercy Health Center v. State Health Facilities Council*, 360 N.W.2d 808, 809 (Iowa 1985). The court

may not usurp the agency's function of making factual findings. *McSpadden v. Big Ben Coal Co.*, 388 N.W.2d 181, 186 (Iowa 1980).

Furthermore, an agency's findings must be supported by substantial evidence in the record when that record is reviewable as a whole. Iowa Code § 17A.19(10)(f) (1999 Iowa Code Supplement); *Norland v. Iowa Dept. of Job Serv.*, 412 N.W.2d 904, 913 (Iowa 1987). The evidence need not amount to a preponderance in order to be substantial evidence, but a mere scintilla will not suffice. *Elliot v. Iowa Dept. of Transp.*, 377 N.W.2d 250, 256 (Iowa 1985). In determining whether there is substantial evidence, the court must consider all of the evidence in the record, including both that which contradicts the agency decision and that which supports the agency decision. *City of Davenport v. Public Employment Relations Bd.*, 264 N.W.2d 307, 312 (Iowa 1978). Evidence is substantial to support an agency's decision if a neutral, detached, and reasonable person would find the quality and quantity of evidence sufficient to reach that given conclusion, even if a reviewing court would have drawn a contrary inference from the evidence. *Hamer v. Iowa Civil Rights Comm'n*, 472 N.W.2d 259, 261 (Iowa 1991); Iowa Code § 17A.19(10)(f)(1) (1999 Iowa Code Supplement). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. *Moore v. Iowa Dept. of Transp.*, 473 N.W.2d 230, 232 (Iowa 1991). The relevant inquiry is not whether the evidence might support a different finding, but whether the evidence supports the findings actually made. *Id.*

Nearly all disputes are won or lost with the agency. *Sellers v. Employment Appeal Bd.*, 531 N.W.2d 645, 646 (Iowa App. 1995). An agency decision is final if it is

supported by substantial evidence and contains no errors of law. *Robbenolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 234 (Iowa 1996).

In cases alleging legal error, the court's review is confined to determining whether the board committed an error of law, or acted unreasonably, capriciously, or arbitrarily. *Greenwood Manor v. Iowa Dep't of Pub. Health,* 641 N.W.2d 823, 831 (Iowa 2002) (citing *Sindlinger v. Iowa State Bd. of Regents,* 503 N.W.2d 387, 390 (Iowa 1993)). Agency action is considered arbitrary or capricious when the decision was made "without regard to the law or facts" *Greenwood Manor,* 641 N.W.2d at 831 (quoting *Bernau v. Iowa Dep't of Transp.,* 580 N.W.2d 757, 764 (Iowa 1998)). Agency action is unreasonable if the agency acted "in the face of evidence as to which there is no room for difference of opinion among reasonable minds ... or not based on substantial evidence." *Greenwood Manor,* 641 N.W.2d at 831 (quoting *Citizens' Aide/Ombudsman v. Rolfes,* 454 N.W.2d 815, 819 (Iowa 1990) (citation omitted)).

Additionally, if the matter turns upon an agency's interpretation of Iowa law, then the review of the Board's interpretation of statutory language depends on whether such interpretation has "clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(c), *see also*, *Mycogen Seeds v. Sands*, 686 N.W.2d 457 (Iowa 2004). If such discretion has not been clearly vested with the board, then this Court, "must reverse the board's decision if it is based on 'an erroneous interpretation' of the law." *Id; Doe v. Iowa Bd. of Medical Examiners*, 733 N.W.2d 705 (Iowa 2007). However, if such discretion has been clearly vested in the board, a reversal is appropriate only if the board's interpretation of the statutory language is "irrational, illogical, or wholly unjustifiable." Iowa Code § 17A.19(10)(l).

In making this determination, the Iowa Supreme Court has directed that:

> "[The word 'clearly'] means that the reviewing court, using its own independent judgment and without any required deference to the agency's view, must have a firm conviction from reviewing the precise language of the statute, its context, the purpose of the statute, and the practical considerations involved, that the legislature actually intended (or would have intended had it thought about the question) to delegate to the agency interpretive power with the binding force of law over the elaboration of the provision in question."

Mosher, 671 N.W.2d at 509 (*quoting* Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government* 63 (1998)).

ANALYSIS AND CONCLUSIONS

A) Whether the PAAB erred in limiting Petitioner to arguing downward trends.

The Petitioner argues that it was unfairly prevented from arguing grounds other than a downward trend. While Petitioner agrees that the owner indicated a downward trend on the petition before the Sioux City Board of Review, it also argues that this was the work of a pro se litigant, and that strict technical rules should not have foreclosed alternative grounds for challenging the assessment when the statement accompanying the Petition alerted the Board as to why it felt the building was overassessed. Therefore, the Petitioner argues that the matter should have been held by the PAAB to have been submitted to the Board.

The PAAB responds that it may only address issues before the Sioux City Board. Therefore, it could not consider any other grounds. The PAAB also contends that the argument is irrelevant as the Petitioner could not have argued any alternative grounds, as the downward trend argument was the only available argument during an interim, non-assessment year. The PAAB also argue that the Petitioner is not entitled to any greater deference due to the fact that he was not represented by counsel.

The record does demonstrate that the PAAB did limit the scope of the appeal to downward change though it allowed additional evidence on these grounds. At the hearing, Presiding Officer Stradley stated :

> "Okay, now the grounds filed with the local Board of Review is downward trend. However, the appeal to the Property Assessment Appeal Board was grounds authorized more in law, equity than downward trend. We will only consider today downward trend because this Board cannot hear new grounds that weren't alleged at the, at the local level."

Transcipt at P. 1. Petitioner's attorney agreed to this limitation at the time. Therefore, the Petitioner was expressly disallowed from presenting evidence related to other grounds. Despite this limitation, it appears that the PAAB did address other grounds in its ultimate decision. The decision stated:

> The last numbered paragraph of Iowa Code section 441.37(1) and its reference to section 441.35(3) give rise to the claim of downward tend in value. See Security Mut. Ins. Ass'n of Iowa v. Bd. Of Review of City of Fort Dodge, 467 N.W.2d 301, 304 (Iowa Ct. App. 1991). While the language of section 441.37(1) appears to make this ground available "annually", section 441.35(3) permits protest "[i]n any year after the year in which an assessment has been made." Thus, this ground is only appropriately pled in a non-assessment or "interim" year. *Eagle Food Ctrs, Inc. v. Bd. Of Review of the City of Davenport*, 497 N.W.2d 860, 862

(Iowa 1993). *Therefore, the Appeal Board considered only the ground of downward change in this appeal.*

Pg. 4. This line indicates that the protest was made in an interim year, and therefore is the only ground available to the Petitioner. The Order does not note that Petitioner was not allowed to argue grounds other than that of downward trend though the record reflects that limitation. Therefore, the Court finds relevant the issue of whether Sioux City Review Board unfairly limited the Petitioner's right to argue, but also whether Petitioner had any other appropriate claims that could have been argued before the Sioux City Board of Review. If the Petitioner did not have any valid way to challenge the assessment other than the ground of a downward trend, then the PAAB's actions in restricting the arguments would have had no effect.

The Court has reviewed the decision of the PAAB and finds that it should be upheld on these grounds. In the Petition for Judicial Review, the Petitioner does not identify any ground on which the PAAB should have reversed the decision made by Sioux City. It merely references the fact that the PAAB should have heard alternative arguments , and that the PAAB viewed the Petitioner's appraisal as persuasive and accurate. The Brief submitted by Petitioner states that "Much more of the information in the appraisal as to the value and testimony of the Petitioner as to their vacancy could have been considered by the PAAB if [alternative grounds] were allowed." The Brief fails to identify what these grounds are or how the information would have been relevant to those grounds.

In response, the PAAB cites Iowa Code section 441.37, which lists grounds available for challenging an assessment. The section states:

1. Any property owner or aggrieved taxpayer who is dissatisfied with the owner's or taxpayer's assessment may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment. In any county which has been declared to be a disaster area by proper federal authorities after March 1 and prior to May 20 of said year of assessment, the board of review shall be authorized to remain in session until June 15 and the time for filing a protest shall be extended to and include the period from May 25 to June 5 of such year. Said protest shall be in writing and signed by the one protesting or by the protester's duly authorized agent. The taxpayer may have an oral hearing thereon if request therefor in writing is made at the time of filing the protest. Said protest must be confined to one or more of the following grounds:

a. That said assessment is not equitable as compared with assessments of other like property in the taxing district. When this ground is relied upon as the basis of a protest the legal description and assessments of a representative number of comparable properties, as described by the aggrieved taxpayer shall be listed on the protest, otherwise said protest shall not be considered on this ground.

b. That the property is assessed for more than the value authorized by law, stating the specific amount which the protesting party believes the property to be overassessed, and the amount which the party considers to be its actual value and the amount the party considers a fair assessment.

c. That the property is not assessable, is exempt from taxes, or is misclassified and stating the reasons for the protest.

d. That there is an error in the assessment and state the specific alleged error.

e. That there is fraud in the assessment which shall be specifically stated.

In addition to the above, the property owner may protest annually to the board of review under the provisions of section 441.35, but such protest shall be in the same manner and upon the same terms as heretofore prescribed in this section.

It appears that the arguments regarding this property are encompassed in these grounds. Petitioner is arguing that his property is overassessed and not equitable

compared to other like properties, and also that there was an error in the assessment in not taking into account the correct vacancy provisions. However, Iowa has a biennial system of real estate tax assessment. Odd-numbered years are "assessment years while even-numbered years are "interim years." *Transform, Ltd. v. Assessor of Polk County*, 543 N.W.2d 614, 615 (Iowa 1996) The rules for challenging an assessment are different in interim years than assessment years. This is demonstrated in Iowa Code section 441.37 which only allows challenges in reassessment years.

In interim years, when the assessment has not changed, the only available to challenge is a change in the property's value. See *Transform*, 543 N.W.2d at 616; *Eagle Food Ctrs., Inc. v. Board of Review*, 497 N.W.2d 860, 862 (Iowa 1993); *James Black Dry Goods Co. v. Board of Review*, 151 N.W.2d 534, 599 (1967). The assessment did not change from 2007 until 2008. Therefore, the only ground available was a downward trend in value which could be challenged annually.

The Court recognizes that Iowa Code section 441.37(2) appears to allow correction at any time for a clerical mistake or mathematical error. However, the Iowa Supreme Court has defined the term "clerical error" by stating:

> Based on the common meaning of the statutory language, our prior cases, and authority from other jurisdictions, we hold a clerical error is one of writing or copying. Such an error results in the recording of an assessment figure that was not intended by the assessor. In contrast, an assessment entered in an amount intended by the assessor is not the result of a clerical error even though an error of judgment or law affected the assessor's determination of the proper assessment. That is because an error in judgment or a mistake of law is an error of substance; it is not a *clerical* error.

American Legion, Hanford Post 5 v. Cedar Rapids Bd. of Review, 646 N.W.2d 433, 439 (Iowa 2002). While the Petitioner in this case argues the assessor erred in not correctly applying a vacancy rate, the Court finds this was not a mistake of writing or copying, and that the assessor intended the rate.

It does not appear that the Petitioner was harmed in any way by the comments at the hearing, precluding alternative grounds. As the final order alluded, the only available ground was "downward trend." There was not a clerical mistake or a statutory way to challenge Therefore, the Petitioner was not unfairly restricted by a mistake made in submitting the matter to the Sioux City Board as the restriction would have already been in place.

b) Substantial Evidence

Petitioner argues next that the PAAB erred by not finding compelling evidence that the value changed. In support, the Petitioner relies heavily on the appraisal done by James Verschoor. The Petitioner argues that because of changing market conditions, the value of the property has decreased. In support, Petitioner cites the testimony by the Assessor that he used an incorrect vacancy rate in his calculations. Petitioner argues that the increase in vacancies is an obvious sign of a downward trend

In making its decision that no downward trend had been proven, the PAAB found that the Verschoor evidence was persuasive evidence of the January 1, 2008 fair market value of the property, but the appraisal was silent as to the fair market value of the property in January 1, 2007. The PAAB found that merely relying on the assessment was not enough to show downward change, and that "[v]iewing the

evidence as a whole, it is our conclusion that all evidence necessary to support the claim of downward change is lacking." The PAAB cited *Equitable Life Ins. Co. of Iowa v. Bd. Of review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1977). In *Equitable*, the Iowa Supreme Court decided a case involving a party who claimed that there was a downward trend in value by comparing the original assessment to a final valuation done by its own experts. The Court found that such a comparison was not adequate to show a downward trend. The Court stated:

> Superficially there is a certain attraction in Equitable's argument. It seems logical to argue a taxing authority cannot avoid an accurate interim year assessment by claiming the actual assessment was erroneous. But this is not a fair statement of the board's position.
>
> The board points out the statutory question is whether valuation has changed. An assessed valuation, even at best, is a consensus estimate based on informed judgments. Those estimates will obviously vary from one expert to another. Plaintiff's two experts differed considerably in their estimates as to the January 1, 1974 valuation. Either or both of plaintiff's experts, had they been asked, might have been of the opinion the January 1, 1973 assessed valuation was similarly set too high.
>
> We do not think Equitable made a showing of any change where its two witnesses testified only as to final valuation. In order to make such a showing it would be necessary to show both the beginning and the final valuation. The assessed valuation cannot be used for this purpose. The record is left without a necessary element of the equation. We know what Equitable's experts thought the concluding valuation was; but we have no way of knowing what they believed the opening valuation was. This was insufficient to show a change.

Equitable, 252 N.W.2d at 450-51. The PAAB concluded the same was true in the instant case. While Verschoor's evidence may have been persuasive, evidence is

lacking as to his opinion on the opening value. In order to prove a downward trend, the evidence would have to establish the 2007 value by methods similar to that used by the Petitioner to prove the 2008 value. Verschoor's testimony included various actions from a span of several years that had an effect on the subject property. It is unclear as to how much or whether there was a downward change specifically from January 1, 2007 until January 1, 2008. It appears instead the evidence is focused on proving the assessment value is incorrect, a ground not permitted during an interim year. The PAAB did not make an error as there is no substantial evidence proving a downward trend. The Petitioner's argument that to require another appraisal would be a substantial burden is not sufficient to show that the PAAB erred.

RULING

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT the Petitioner's Petition for Judicial Review is DENIED. The Decision of the PAAB is AFFIRMED.

IT IS SO ORDERED.

Signed this 30th day of March, 2010.

BY THE COURT

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James Scott, Judge
Third Judicial District of Iowa